



DEPARTMENT OF THE NAVY

OFFICE OF THE CHIEF OF NAVAL OPERATIONS
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WASHINGTON, DC 20350-2000

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Ser DNS-36JP/17U104852

June 15, 2017

Sent via email to: bgood@aclu.org

Mr. Benjamin Good
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

Dear Mr. Good:

This is a final response in reference to your Freedom of Information Act (FOIA) request dated March 3, 2016. Your request was received in our office on March 14, 2016 and assigned FOIA case number DON-NAVY-2016-004460. Through litigation, the American Civil Liberties Union (ACLU) narrowed the scope of its request to all documents created from January 1, 2009 to present that contain the following five categories of information:

- (1) policies, standards, and guidance related to prepublication review;
- (2) final legal analyses of past, present, or proposed prepublication-review requirements;
- (53) statistics relating to prepublication review, including but not limited to information documenting the total numbers of individuals who have submitted works for review, the total number of works submitted for review, the total number of submissions approved without change, the total number of submissions returned with proposed redactions or other modifications, the total number of pending submissions, and the duration of prepublication review processes[;]
- (64) titles, subject matters, [] dates of works submitted for prepublication review, [and outcomes of the prepublication review process.] (This prong can be satisfied with either of two subcategories of documents:
 - (1) charts or summary documents or (2) final decisions of officials conducting prepublication reviews. Subcategory (1) is preferable and, if produced, alleviates the need to produce records in category (2).); and
 - (75) information about enforcement proceedings instituted or contemplated on the basis of violations of prepublication-review requirements, including breach-of-

contract actions, agency administrative proceedings, and civil or criminal litigation.

This office previously provided an interim response with a release of one 34-page document on April 24, 2017.

This office coordinated a Navy-wide search for the requested information by tasking 38 Naval Headquarters Commands to independently conduct searches of their files for responsive records and to direct subordinate commands to do the same. 22 of the 38 Naval Headquarters Commands and subordinate unit searches returned no responsive records. However, in addition to the record previously released, the remaining 15 Naval Headquarters Commands and subordinate unit searches returned a total of 224 pages of information responsive to your request. The responsive documents are enclosed hereto, with redactions of information exempt from release as discussed below.

One responsive document (two pages), from Naval Special Warfare Command, contains information that is exempt from disclosure under 5 U.S.C. § 552(b)(1), 5 U.S.C. § 552(b)(3), pursuant to 10 U.S.C. § 130 and 10 U.S.C. § 130b, 5 U.S.C. § 552(b)(5), and 5 U.S.C. § 552(b)(7)(A), (b)(7)(E), and (b)(7)(F). The information exempt from disclosure has been redacted; however, the remainder of the document is released to you.

In accordance with Executive Order 13526, Sections 1.4(a) through (e) and 1.7(e), information contained within this document is currently and properly classified because it pertains to 1.4(a) military plans, weapons systems, or operations; (b) foreign government information; (c) intelligence activities (including covert action), intelligence sources or methods, or cryptology; (d) foreign relations or foreign activities of the United States, including confidential sources; (e) scientific, technological, or economic matters relating to the national security; or 1.7(e) compilations of items of information that are individually unclassified but when compiled reveals an additional association or relationship that: (1) meets the standards for classification under this order; and (2) is not otherwise revealed in the individual items of information. Accordingly, this information is withheld under 5 U.S.C. § 552(b)(1).

Pursuant to section (b)(3) of the FOIA, records concerning matters that another statute specifically establishes criteria for withholding are exempt from disclosure. This exemption allows for the withholding of information prohibited from disclosure by another statute provided that the statute "(A)(i) requires that the matters be withheld from the public in such a

manner as to leave no discretion on the issue; or (A) (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld." The Naval Special Warfare Command record contains information that is exempted from disclosure under both (A) (i) and (A) (ii).

10 U.S.C. § 130 states, "Notwithstanding any other provision of law, the Secretary of Defense may withhold from public disclosure any technical data with military or space application . . . if such data may not be exported lawfully outside the United States without an approval, authorization, or license under . . . 50 U.S.C. 4601 et seq. . . . or 22 U.S.C. 2751 et seq."

10 U.S.C. § 130b states, "The Secretary of Defense and, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security may, notwithstanding section 552 of title 5, authorize to be withheld from disclosure to the public personally identifying information regarding – (1) any member of the armed forces assigned to an overseas unit, a sensitive unit, or a routinely deployable unit; and (2) any employee of the Department of Defense or of the Coast Guard whose duty station is with any such unit."

This record also contains deliberative process privileged material, is predecisional in nature, and such information is exempt from disclosure under 5 U.S.C. § 552(b)(5). Specifically, the record contains deliberative thought processes and frank and open discussion on predecisional matters. Due to the nature of such discussions, disclosure could discourage such forthright discussion on future reviews, impairing the decisionmaking process. Therefore, those portions are exempt from disclosure.

Additionally, this record contains information concerning an open investigation or criminal proceeding such that disclosure of this information could be reasonably expected to interfere with these enforcement proceedings, information that would disclose techniques and procedures for law enforcement investigations or prosecutions, reasonably expected to risk circumvention of the law, and information that, if disclosed, could reasonably be expected to endanger the life or physical safety of an individual. That information is therefore exempt from disclosure under 5 U.S.C. § 552(b)(7)(A), (b)(7)(E), and (b)(7)(F), accordingly.

Nine records contain personally identifiable information (PII), such as the names, personal addresses, and telephone numbers of individuals. 5 U.S.C. § 552(b)(6) allows agencies to withhold information that could reasonably be expected to constitute an unwarranted invasion of personal privacy. To

determine whether disclosure is warranted, the privacy interests of individuals must be balanced against any public interest served by disclosure – specifically whether the release of the information will shed light on the agency's performance of its statutory duties. Certain instances of PII are exempt from disclosure under (b) (6), since release of this information would result in a clearly unwarranted invasion of their personal privacy. Accordingly, the PII has been redacted, but the remainder of these documents are released to you.

Questions regarding the action this office has taken to process your request may be directed to our FOIA Service Center at (202) 685-0412.

Sincerely,



R. Patterson
Head, DON PA/FOIA Program Office

Enclosures:

1. Naval Special Warfare Command Spreadsheet (two pages)
2. Chief, Bureau of Medicine and Surgery ltr Ser MOCJE/17UM00J0095 of 2 May 17 (one page)
3. Naval Audit Service Responsive Records (42 pages)
4. U.S. Naval Forces Central Command Responsive Records (25 pages)
5. Commander, Naval Facilities Engineering Command Summary Sheet (one page)
6. Commander, Naval Supply Systems Command Responsive Record (one page)
7. Space and Naval Warfare Systems Command Summary Sheet (one page)
8. U.S. Naval Academy Responsive Records (25 pages)
9. Naval Postgraduate School email of 28 Apr 17 w/encl (23 pages)
10. Commander, Naval Sea Systems Command Instruction 5230.12A, "Release of Information to the Public" (22 pages)
11. Commandant, Naval District Washington Instruction 5720.1A, "Guidance for the Use of Official External Social Media" (five pages)
12. Commander, Office of Naval Intelligence Instruction 5870.1C, "Approval Process for the Publication of Original Works" (seven pages)
13. Chief of Naval Research Instruction 5570.2A, "Processing of Unclassified Technical Information" (nine pages)

14. Office of Naval Research Responsive Records (14 pages)
15. Director, Strategic Systems Projects Instruction 5540.2D, "Policy and Procedures for Security Review Requests for the Public Release of Unclassified Information Generated under the Director Strategic Systems Programs" (nine pages)
16. Commander, U.S. Fleet Forces Command Responsive Records (one page)
17. Naval Research Lab Responsive Records (36 pages)